

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CHURCH BROTHERS, LLC, a California
Limited Liability Company,

Plaintiff,

v.

THE ALPHAS COMPANY, INC., a
corporation; THE ALPHAS COMPANY
OF NEW YORK, INC, a corporation;
JOHN (YANNI) S. ALPHAS, an
individual; PETER S. ALPHAS, an
individual,

Defendants

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CASE NO.

FILED
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U.S. DISTRICT COURT
DISTRICT OF MASS.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING
ORDER OR, ALTERNATIVELY, FOR PRELIMINARY INJUNCTION IN
SUPPORT THEREOF

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

This case arises out of the Perishable Agricultural Commodities Act of 1930, as amended in 1984, 7 U.S.C. §499a, et seq. (“PACA” or “Act”), and the PACA Trust provisions set forth at 7 U.S.C. §499e, et seq.

Plaintiff CHURCH BROTHERS, LLC (“CB” or “Plaintiff”), operate as sellers of perishable agricultural commodities and are the beneficiaries of a statutory trust provided for by the PACA.

Under the terms of the statutory trust, Defendants THE ALPHAS COMPANY, INC., a corporation; THE ALPHAS COMPANY OF NEW YORK, INC., a corporation; JOHN (YANNI) S. ALPHAS, an individual; PETER S. ALPHAS, an individual, (hereinafter referred to as “Defendants”), are statutory trustees who must hold in trust for Plaintiff all inventories of food or other products derived from perishable produce, including any receivables or proceeds from the sale thereof, until Plaintiff’s PACA trust claims are fully paid.

Plaintiff’s PACA trust claims have priority over all other secured and unsecured claims against Defendants. By virtue of 7 U.S.C. §499e(c)(4), U.S. District Courts are vested with original jurisdiction to hear actions brought by PACA trust beneficiaries to enforce payment from the trust.

In a series of transactions, occurring at the dates and in the amounts alleged in the First Cause of Action of Plaintiff’s complaint, Plaintiff sold and shipped perishable agricultural commodities to Defendants in accordance with Defendants’ instructions and at agreed-upon selling prices.

All commodities sold as described above were shipped in or in contemplation of, interstate and foreign commerce and were accepted by Defendants. Despite accepting all the commodities and despite reselling those commodities to their own customers, Defendants failed to pay for the commodities. Not only did Defendants admit that the sums due as alleged herein remain payable to Plaintiff, but Defendants have failed and refused to fully and timely pay for the commodities despite repeated promises to make such payments and have dissipated the PACA trust assets rightfully belonging to Plaintiff.

Therefore, Plaintiff now seeks a Temporary Restraining Order or, alternatively, a Preliminary Injunction which would, in relevant part, (a) prevent Defendants from further dissipating the trust assets, and (b) require Defendants to release or otherwise set aside the amounts owed to Plaintiff pending final adjudication of the complaint on file herein.

The issues to be decided by this Court upon Plaintiff's application are as follows:

1. Whether Plaintiff qualifies as PACA trust beneficiaries;
2. Whether Defendants dissipated or are dissipating PACA trust assets including, but not limited to, inventory of perishable agricultural commodities, proceeds from the sale of such commodities and Defendants' accounts receivable; and,
3. Whether Defendants must immediately set aside and turn over to Plaintiff, PACA trust assets in amounts sufficient to satisfy Plaintiff's PACA trust claims as alleged herein.

A Temporary Restraining Order is an appropriate vehicle for protecting a PACA trust beneficiary's rights. *Tanimura and Antle, Inc., et al. v. Packed Fresh, Inc., et al.*,

222 F.3d 132, 140-141 (3d Cir. 2000); *Gullo Produce Company, Inc., et al. v. A.C. Jordan Produce Co., Inc.*, 751 F.Supp. 64 (W.D. Pa. 1990); *Frio Ice, S.A. v. Sunfruit, Inc.*, 918 F.2d 154 (11th Cir. 1990); *J.R. Brooks & Son, Inc. v. Norman's Country Market, Inc.*, 98 B.R. 47 (Bankr. N.D. Fla. 1989); Patricia J. Rynn, *Injunctive Relief Under The 1984 Trust Amendments to The Perishable Agricultural Commodities Act: A Necessary Means of Trust Enforcement*, 23 U.C. Davis L.Rev. 3 (Spring 1990).

The district courts of the United States are vested with jurisdiction specifically to entertain actions by PACA trust beneficiaries to enforce payment from the trust. 7 U.S.C. §499e(c)(5). Accordingly, it is properly within this Court's discretion to grant Plaintiff's requested injunctive relief. By way of example, the attached injunction orders obtained from various U.S. District Courts are substantially identical to the requested order herein and are based upon produce creditors seeking enforcement of their PACA trust rights. *See*, Orders to Show Cause, true and correct copies of which are attached hereto and incorporated herein by reference as **Group Exhibit 1**.

II. ALL REQUIREMENTS FOR ESTABLISHING A PACA TRUST HAVE BEEN SATISFIED IN THE CASE AT BAR

A. The PACA Amendment Establishes A Trust For The Benefit Of The PACA Beneficiaries

The PACA Amendment provides that the PACA Trust is created by operation of law upon the delivery of perishable agricultural commodities. In enacting the PACA Amendment, Congress recognized the importance of protecting the seller's perishable agricultural commodities. In particular, the PACA Amendment states, as follows:

It is hereby found that a burden on commerce in perishable agricultural commodities is caused by financing arrangements under which...dealers...who have not made payment for perishable

agricultural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, encumber or give lenders a security interest in, such commodities, or on inventories of food or other products derived from such commodities, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest. This subsection is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest. 7 U.S.C. §499e(c)(1) (Supp. 1986). (Emphasis added).

Therefore, upon the buyer's receipt of the produce, the PACA Amendment creates a PACA Trust in favor of the unpaid seller on all perishable agricultural commodities, all inventories of food or other products derived from perishable agricultural commodities as well as any receivables or proceeds from the sale of such commodities or products. 7 U.S.C. §499e(c)(2) (Supp. 1986). Specifically, the PACA Amendment provides, as follows:

Perishable agricultural commodities received by a...dealer...in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such...dealer...in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. 7 U.S.C. §499e(c)(2) (Supp. 1986).

Accordingly, as soon as Defendants herein received the produce sold by Plaintiff, the PACA Trust was created by operation of law.

B. There Is No Tracing Requirement For The PACA Trust

The PACA Amendment does not require tracing and therefore trust assets are to be preserved as a non-segregated "floating trust." In addition, the amendment acknowledges that commingling is contemplated. If a dispute arises regarding the

identification of the trust assets, the debtor has the burden to establish what, if any, assets are not subject to the PACA Trust. *See, In re Fresh Approach*, 51 B.R. 412, 422 (Bankr. N.D. Texas 1985) [*“Fresh Approach IP”*], a seminal judicial decision analyzing the impact of the statutory trust provisions.

In accordance with legislative directives, the court in *Fresh Approach II* based its decision upon the Packers and Stockyards Act, 1921 [7 U.S.C. §181, et seq.] (hereinafter “PSA”), and its subsequent line of cases, concluding that the trust created by the PACA was intended to be a “floating non-segregated statutory trust,” to which claimants need not trace funds. *See, In re Monterey House*, 71 B.R. 244, 247 (Bankr. S.D. Texas 1986). Furthermore, the court in *First State Bank v. Gotham Provision Co. (In re Gotham Provision Co.)*, 699 F.2d 1000, 1011 (5th Cir. 1982) (hereinafter “*Gotham*”), in holding that the PSA established a floating trust, stated:

[W]here trust funds are commingled with funds not subject to the trust, a lien on the entire commingled fund exists for the benefit of the beneficiaries of the trust.

The *Gotham* court further held that when commingling occurs, the only burden on the unpaid cash sellers is to prove the balance due to them and the existence of a floating pool of commingled inventories of livestock products, accounts receivable and proceeds derived from cash and credit sales. *Id.* The court in *Gotham*, however, clearly placed the burden on the bankruptcy trustee (and the lending institution) to show that the receivables were not subject to the PACA trust. *Id.* at 1012. *In re Hancock-Nelson Mercantile, Inc.*, 95 B.R. 982 (Bankr. N.D. Minn. 1989); *In re W.L. Bradley Company, Inc.*, 75 B.R. 505 (E.D. Pa. 1987).

In re Kornblum & Co., Inc., 81 F.3d 280 (2nd Cir.N.Y. 1996) is particularly instructive because of its analysis of the issue of what property makes up the corpus of the PACA Trust. The *Kornblum* court rejected the debtor's contention that the only assets that are held in trust for a particular PACA beneficiary are the specific produce or proceeds supplied by that beneficiary. The court accepted the beneficiaries' argument that the res of the PACA Trust is not so limited and that "a single PACA trust exists for the benefit of all of the sellers to a Produce Debtor, and continues in existence until all of the outstanding beneficiaries have been paid in full."

The *Kornblum* court set forth a three-prong test for analyzing whether specific property is part of the PACA Trust. In order to prove that the property is not part of the PACA Trust, the debtor has the burden to establish either that (1) no PACA trust existed when the specific property was purchased; (2) even though a PACA Trust existed at that time, the property was not purchased with trust assets; or (3) although a PACA Trust existed when the property was purchased and the property was purchased with trust assets, the debtor thereafter paid all unpaid sellers in full prior to the transactions involving the creditors, thereby terminating the trust.

Moreover, in *In re Atlantic Tropical Market Corporation*, 118 B.R. 139 (Bankr. S.D. Fla. 1990), the court held that the PACA trust fund is established upon the commencement of the purchaser's produce related business. The court held that any business assets purchased by one who is in the business of buying and selling produce will be presumed to have been purchased with PACA trust assets, and any such assets may thus be viewed as collateral until the PACA trust claim has been paid in full. *See*

also, *Sanzone-Palmisano Company v. M. Seaman Enterprises, Inc.*, 986 F.2d 1010 (6th Cir. 1993).

Accordingly, the PACA beneficiary is not required to trace trust funds. To the extent any dispute arises regarding the trust assets, it is the Debtor who must prove which assets, if any, are not subject to the trust. *In re Fresh Approach, supra*.

Defendants are required by federal statute to hold all perishable agricultural commodities, the inventories of food or other products derived from the perishable agricultural commodities and the receivables and proceeds from the sale of the perishable agricultural commodities in trust for the PACA beneficiaries. In the event these liquid and intangible assets are insufficient to fully satisfy Plaintiff's trust claims, Plaintiff may look to other assets of Defendants for security of its trust claims. Defendants herein have failed or otherwise refused to perform their statutory duties and Plaintiff is therefore entitled to injunctive relief, which will require Defendants to set aside sufficient assets to fully satisfy their statutory trust obligations and which will restrain Defendants from any dissipation of the assets required to be held in trust.

C. Defendants are "Dealers" As Defined by the Perishable Agricultural Commodities Act.

Defendants are "dealers" under the PACA and are, therefore, subject to the PACA Trust Amendment. 7 U.S.C. §499e(a) and (c)(2). Specifically, the PACA Amendment and its regulations defines "dealer" as follows:

"Dealer" means any person engaged in the business of buying or selling in wholesale or jobbing quantities in commerce . . . ;
7 U.S.C. §499a(6)

Further, an entity may subject itself to PACA rules and regulations as a “dealer” by obtaining or being subject to license by the U.S. Department of Agriculture. Specifically during all times herein, Defendants have maintained PACA License numbers 20000068 and 20011143. *See*, Declaration of R. Jason Read, filed herewith, and exhibits appended thereto.

Defendants are therefore unquestionably subject to PACA and are therefore subject to all PACA rules and regulations.

D. The Produce Sold By Plaintiff Moved In And/Or In Contemplation Of Interstate Or Foreign Commerce

To qualify for protection under the PACA, the perishable agricultural commodities must have been bought or sold in the course of or in contemplation of foreign interstate commerce. 7 U.S.C. §499a(6). The produce that was sold to Defendants clearly moved in the stream of “interstate commerce” as that term has been defined by the case law.

For example, *Fresh Approach II* discussed “interstate commerce” and held that interstate commerce is established where the debtor purchases produce from both out-of-state vendors and in-state vendors who acquired produce from out-of-state sources. *See Fresh Approach II*, 51 B.R. at 424-28. *Id.* at 425. Specifically, the court stated:

In the case at bar, Debtor was one of the intermediaries in the stream of commerce flowing from the producers in various states to the consumers in Dallas, Texas. While it is true that a segment of that stream was wholly within the state of Texas, i.e., from [the PACA beneficiary] to Debtor, it cannot reasonably be denied that all parties contemplated a transaction having the practical effect of providing access for Texas consumers to produce grown in other states. *Id.* at 426.

Further, one court specifically held that PACA trust protection also extends to intrastate transactions by any “commissioned merchants, dealer, or broker” as defined

under the PACA. *J.R. Brooks & Son, Inc. v. Norman's Country Market, Inc.*, 98 B.R. 47, 49-50 (Bankr. N.D. Fla. 1989).

The declarations of Plaintiff's representative filed in support hereof verify that the produce sold in the subject transactions were sold in, and in contemplation of, interstate commerce, specifically between California, Massachusetts, and New York.

Accordingly, the transactions at issue are within the scope of PACA and its statutory trust provisions.

E. Plaintiff Perfected Its Right To PACA Trust Benefits By Issuing Invoices That Contain All Language Necessary To Preserve Plaintiff's PACA Trust Rights in Compliance with 7 U.S.C. §499e(c)(4)

Plaintiff is and during all times herein was a PACA licensee. *See* Declarations of Plaintiff's representative filed simultaneously herewith. Pursuant to the 1995 Amendments to the Act, PACA licensees, such as Plaintiff herein, may preserve PACA trust rights by using ordinary and usual invoice statements to provide notice of the licensee's intent to preserve its trust benefits. 7 U.S.C. §499e(c)(4). Thus, under the terms of the 1995 PACA Amendments, a licensee who includes the following statement on the face of its invoices will have perfected its PACA trust rights:

"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. §499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received." 7 U.S.C. §499e(c)(4).

As is self-evident from the copies of Plaintiff's invoices for the subject transactions (attached as Exhibits to the Plaintiff's Declaration) all of the unpaid

invoices included the above-quoted language, verbatim, on their face. Consequently, Plaintiff qualifies as trust beneficiaries under the PACA for all transactions which are the subject of those invoices. Therefore, this threshold requirement of the PACA Amendment has been satisfied.

F. Defendants Failed To Establish A PACA Trust For The Protection of the PACA Beneficiaries

Defendants were required by the PACA Amendment to hold:

[A]ll inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products...in trust for the benefit of...[the PACA Beneficiary] until *full payment* of the sums owing in connection with such transactions has been received by...[the PACA Beneficiary]. [7 U.S.C. §499e(c)(2).] (Emphasis added).

Defendants failed and refused, and continue to fail and refuse, to preserve the PACA assets as required by the Act and by Defendants' actions and admissions, have insufficient trust assets to pay the amounts protected under the trust. *See* Declaration of Plaintiff's representative filed simultaneously herewith. As such, Defendants are in violation of 7 U.S.C. §499e et seq. *See, In re Nagelberg & Co., Inc.*, 84 B.R. 19 (Bankr. S.D.N.Y. 1988), which confirms that dissipation of PACA trust assets results from any act which could result in the diversion of such assets or which could prejudice or impair the ability of unpaid suppliers, sellers, or agents to recover money owed in connection with produce transactions. *See also*, 7 C.F.R. §46.46 (b)(2).

Moreover, during all times herein, Defendants JOHN (YANNI) ALPHAS and PETER S. ALPHAS (collectively, "The Individual Defendants") were the sole officers, directors and shareholders of both THE ALPHAS COMPANY, INC. ("TAC") and THE ALPHAS COMPANY OF NEW YORK, INC. ("TACNY") and held positions from

which they could exercise control over the PACA trust assets which are the subject of this action. As such, The Individual Defendants are personally liable for Defendants failure to preserve the statutory trust assets. *See Fillipo v. S. Bonaccurso & Sons, Inc.*, 466 F.Supp. 1008, 1016 (E.D. Pa 1978); *Hendrick v. S. Bonaccurso & Sons, Inc.*, 466 F.Supp. 1025 (E.D. Pa 1978); *Morris Okun, Inc. v. Harry Zimmerman, Inc.*, 814 F. Supp. 346 (S.D.N.Y. 1993); *In re Harper*, 150 Bankr. Rptr. 416 (E.D. Tenn. 1993); *Mid-Valley Produce Corp. v. 4-XXX Produce Corp.*, 819 F.Supp. 209 (E.D.N.Y. 1993). *See also Sunkist Growers, Inc. v. Fisher*, 104 F.3d 280 (9th Cir. 1997), which held that those in positions to control assets of the PACA trust, and who have breached their fiduciary duty to preserve those assets, may be held personally liable under the PACA. *See also, In re Harper*, 150 Bankr. Rptr. 416 (E.D. Tenn. 1993); and Bartholomew M. Botta, *Personal Liability for Corporate Debts: The Reach of the Perishable Agricultural Commodities Continues to Expand*, 2 DRAKE J.AG.LAW 339 (Winter 1997).

G. All Of The Threshold Prerequisites To The PACA Beneficiary's Right To Recovery Under The PACA Amendment Have Been Established

Plaintiff has established that they are entitled to enforce their trust claims against Defendants for the perishable agricultural commodities sold to Defendants. Specifically, the evidence shows that Plaintiff established:

1. The PACA Amendment creates a trust for the benefit of the PACA Beneficiaries;
2. There is no tracing requirement for the PACA Trust;
3. Defendants are dealers and statutory trustees under the PACA;

4. The perishable agricultural commodities sold by the Plaintiff moved in the course of or in contemplation of foreign and interstate commerce;
5. Plaintiff perfected its rights to the trust assets by including the statutory trust language on its invoices and thus have valid PACA trust claims against Defendants in the combined amount of at least \$76,150.20, consisting of \$67,161.90 owed by TAC and \$8,988.30 owed by TACNY.
6. Defendants failed to maintain the PACA trust assets sufficient to protect Plaintiff, and dissipated and will be dissipating trust assets absent injunctive relief; and,
7. The Individual Defendants were in positions to control the PACA trust assets that are the subject of this action, and by breaching their fiduciary duties to the PACA beneficiary, are personally liable for the unpaid PACA trust claim.

Accordingly, this Court should find that Defendants were and are obligated to promptly pay Plaintiff the combined principal amount of at least \$76,150.20, plus recoverable attorney's fees and finance charges, all of which is protected under the provision of the PACA trust, as detailed in the Ex Parte Application.

**III. THE TRUST CLAIM OF THE PACA BENEFICIARY IS SUPERIOR
TO AND TAKES PRIORITY OVER ALL OTHER SECURED OR UNSECURED
CLAIMS AGAINST DEFENDANTS**

The unambiguous wording of the PACA Amendment compels this Court to give Plaintiff's trust claims priority over all other secured or unsecured claims against

Defendants. Legislative history concerning the PACA amendment makes it clear that it is intended to protect sellers of perishable agricultural commodities. The agriculture industry is unique because of the short life span of agriculture products. Thus, Congress recognized that the industry itself must be protected and therefore, through PACA, granted priority status to sellers of produce over other lenders who take liens on accounts, inventory and the proceeds thereof. [7 U.S.C. §499e(c)(1)] (Supp. 1986).

In addition to the amendment itself, judicial decisions consistently affirm that a PACA Trust Beneficiary's trust claim has priority over other secured and unsecured claims. *See, In re Monterey House, Inc., supra*, at 249; *accord, In re Milton Poulos, Inc.*, 947 F.2d 1351 (9th Cir. 1991); *See also, In re Prange Foods Corp.*, 63 B.R. 211 (Bankr. W.D. Mich. 1986). For example, *In Fresh Approach II, supra*, at p. 420-422, the court describes the priority of the PACA claimant's interest by holding:

It is clear from the terms of the PACA Amendments and the supporting legislative history that Congress intended to create a priority status for unpaid claimants, priming even the administrative claims which normally stand first in line in a bankruptcy distribution. To approve a plan which grants anything but such a priority would be in direct contravention of the purpose and intent of the PACA amendments. (Emphasis in original). 51 B.R. at 420.

See also, C.H. Robinson Company v. Alanco Corp., 239 F.3d 483 (2nd Cir. 2001) which held:

Allowing a ... PACA trustee to pay any other creditors with, PACA funds before the Seller is paid in full would frustrate [PACA's] purpose, and would be contrary to the language of PACA and its accompanying regulations. **PACA trust beneficiaries are entitled to full payment before trustees may lawfully use trust funds to pay any other creditors."** *Id.* at 488 (Emphasis added.)

Based upon the foregoing authorities, the PACA trust beneficiary unquestionably enjoy a priority status over all other creditors of Defendants, including secured creditors.

IV. PLAINTIFF WILL SUFFER IRREPARABLE INJURY ABSENT THE ISSUANCE OF INJUNCTIVE RELIEF BY THIS COURT

The traditional elements for injunctive relief are: (a) irreparable harm; (b) probable success on the merits; (c) harm to the Plaintiff which outweighs the harm to the opposing party; and, (d) whether the public interest will be served by granting the proposed relief. *Dollar-Rent-a-Car of Washington v. Travelers Indemnity*, 774 F.2d 1371, 1374 (9th Cir. 1985). See also Federal Rules of Civil Procedure Rule 65(b).

These elements are satisfied where sellers of perishable agricultural produce are not paid by the buyer for such produce and the seller demonstrates: (1) dissipation of the PACA trust assets; and (2) the buyer's general financial instability. *Tanimura and Antle, Inc., et al. v. Packed Fresh, Inc., et. al.*, 222 F.3d 132, 140-141 (3d Cir. 2000).

Because PACA is remedial legislation, it must be construed broadly to effectuate its purpose of ensuring payment to unpaid produce sellers who qualify as PACA trust beneficiaries. Therefore, PACA trust dissipation constitutes irreparable harm and will satisfy the irreparable harm requirement for preliminary injunctive relief, especially where Plaintiff submits evidence that the trust is being depleted and payment is not readily forthcoming or available. *Tanimura and Antle, Inc., et al. v. Packed Fresh Produce, Inc., et al.*, 222 F.3d at 140-141.

In the *Tanimura and Antle, Inc., et al v. Packed Fresh Produce, et al.* case, Plaintiff sought a Temporary Restraining Order to, among other things, prevent further dissipation of the PACA trust assets. After hearing, the District Court denied injunctive relief because (1) it believed the Plaintiff had an adequate remedy at law; and (2) it

believed injunctive relief to be futile when the PACA trust assets were already depleted. *Id.* at 134.

On appeal, the District Court's denial of injunctive relief was reversed. In concluding that injunctive relief should have been granted, the Court of Appeal explained:

[W]e conclude that an adequate remedy at law does not exist, and that injunctive relief to prevent dissipation of PACA trust assets may issue, when it is shown that the trust is being depleted and the likelihood is great that there will be no funds available to satisfy a legal judgment against the delinquent buyer. *Id.* at 139.

With specific reference to the irreparable harm requirement, the Court noted that Plaintiff in the *Packed Fresh Produce* case suffered irreparable injury as soon as the trust was depleted and payment was not readily forthcoming or available. *Id.* at 140-141.

Numerous federal courts across the country have held that PACA trust dissipation satisfies the irreparable harm requirement for injunctive relief if, absent such relief, ultimate recovery is rendered unlikely. For example, *See Continental Fruit Co. v. Gatzolis & Co.*, 74 F.Supp. 453 (N.D. Ill. 1991) (finding irreparable harm because, absent injunctive action, potential trust dissipation would contravene PACA and permanently injure the trust beneficiary when the trustee had limited assets); *Gullo Produce Co., v. A.C. Jordan Produce Co.*, 751 F.Supp. 64, 67 (W.D.Pa. 1990) (concluding that Plaintiffs "have suffered and will continue to suffer immediate and irreparable harm if the Defendant is not restrained from using or otherwise dissipating the trust assets" when the Defendant's insolvency precluded recovery); *DeBruyn Produce, Co. v. Olympic Produce Co.*, 734 F.Supp. 483, 485-86 (N.D.Ga. 1989) (granting injunctive relief in the form of a segregated trust because the Plaintiff, in light of the

Defendant's troublesome financial situation, would suffer irreparable harm if unable to collect its receivables).

Plaintiff has submitted substantial evidence of dissipation of PACA trust assets and Defendants' general financial instability.¹ Specially, Plaintiff demanded payment from Defendants on dozens of occasions via telephone calls in addition to sending invoices requesting payment. Despite these efforts, payment has not been received. Further Defendants admitted that the money is due, but nevertheless failed and refused to pay any portion of the debt despite repeated promises to do so.

For these reasons, adequate evidence exists to establish that Defendants dissipated PACA trust assets, failed to maintain trust assets in amounts sufficient to fully pay Plaintiff for the produce which is the subject of this dispute and are likely unable to fully repay the debt. On that basis alone, Plaintiff has adequately satisfied the irreparable harm requirement necessary for injunctive relief.

Finally, it should be noted that Congress, in establishing the trust over perishable agricultural commodities and their proceeds, recognized the risks and hardships inherent in being a grower and shipper of perishables and the irreparable harm which will result when an insolvent purchaser cannot pay the grower in a timely manner. Specifically, Congress has stated:

The process of growing, harvesting, packing and shipping perishables is a real gamble; costs are high, capital and returns are delayed until the crop is sold. If the grower-shipper cannot realize any returns on the sale of the crop when due, he may not

¹ Notably, the evidence submitted here is exactly the same sort of evidence submitted in the *Packed Fresh Produce* matter and which the Court of Appeal deemed sufficient when concluding that injunctive relief should issue.

be able to survive. Thus, where business failures or reorganizations occur on the part of buyers of their crop, the growers are usually the parties least able to withstand the losses and inevitable delays which result from such actions. [Perishable Agricultural Commodities Act of 1930, Amendments, H.R. No. 98-543 (1984)].

Thus, Congress clearly acknowledged that when a supplier of perishable agricultural commodities is not paid by a purchaser, the supplier is exposed to irreparable harm to such a degree that the supplier may not even be able to survive. Accordingly, the PACA trust was created to remedy these potentially devastating risks to the suppliers by imposing a trust in favor of that supplier on the inventories of commodities and products derived therefrom and upon all proceeds of sales of such commodities and products in the hands of the commission merchant, dealer or broker. *Fresh Approach II*, 51 B.R. at 421.

The purpose of the PACA trust can only be accomplished if the corpus of the trust is maintained for the benefit of the unpaid supplier until full payment has been made for all commodities purchased. *In re Annde Foods, Inc.*, 110 B.R. 346 (Bankr. N.D. Ill., 1989). Therefore, unless the relief requested by Plaintiff is issued to protect the trust rights of Plaintiff, there is the very real possibility that Plaintiff's trust rights may effectively be eviscerated. Parenthetically, because several months elapsed between when the TRO was first denied by the District Court in the *Packed Fresh* case and when it was finally entered after appeal, the PACA trust assets were dissipated and the PACA trust beneficiaries remain unpaid. Plaintiff asks this Court, in the exercise of its sound discretion, to minimize any prospects of such a repeat occurrence in the current case and to immediately require Defendants to preserve trust assets in a manner that they are guaranteed to be available to satisfy Plaintiff's trust claim.

For these reasons, Plaintiff will be irreparably harmed by the continued dissipation of trust assets if Defendants are not restrained from spending, diverting or distributing any funds before a hearing can be had on the merits of Plaintiff's complaint. Moreover, Defendants must be compelled to establish a segregated account into which trust funds must be placed in an amount sufficient to satisfy Plaintiff's claims. In the event the Court is inclined to hear this matter after notice despite the above, Plaintiff urges the court to set the hearing on an emergency basis not to exceed 24 hours.

Plaintiff has established that its claim to the trust assets is prior in right to all others. The trust interests of Plaintiff will be irreparably harmed if Defendants remain free to divert trust assets to third parties and Plaintiff do not receive payment. *Further loss or dissipation of product proceeds or receivables held in trust by Defendants can only be prevented if the Court requires Defendants to segregate sufficient assets by depositing funds with the Court or in the alternative, depositing sufficient funds in a separate, trust account to be established by counsel herein.*

Finally, success on the merits of this particular action is highly likely. Defendants do not dispute that it has not paid Plaintiff for the produce transactions at issue. Moreover, it is clear that Plaintiff fully perfected its trust claim under the Act.

V. NO BOND SHOULD BE REQUIRED TO GRANT PRELIMINARY RELIEF

No bond should be required to be posted as a condition of preliminary relief. Federal Rule of Civil Procedure 65(c) speaks of requiring a bond “for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” However, the court has the discretion to dispense with the requirement of a bond completely under appropriate circumstances or to require a nominal bond. *Sundor Brands, Inc. v. Borden, Inc.*, 653 F. Supp. 86, 93 (M.D. Fla. 1986). *See also, California ex rel. Van De Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1324-25, *as amended*, 775 F.2d 998 (9th Cir. 1985); *Wayne Chemical, Inc. v. Columbus Agency Serv. Corp.*, 567 F.2d 692, 701 (7th Cir. 1977).

In the instant matter, Defendants are to be ordered simply to comply with the trust provisions of the PACA. As it is required to do by law, Defendants are to sequester the PACA trust assets to which it lacks equitable title and to use them for the statutorily mandated purpose of satisfying qualified PACA claims.

The monies are clearly not Defendants’ property. Rather, Defendants merely hold them as trustee for Plaintiff. Accordingly, there is no potential harm to Defendants from an order compelling them to comply with the law and to set aside funds that are not Defendants’ property. Under these circumstances, no bond should be required.

Accordingly, Plaintiff submits that the posting of a bond should not be a condition of obtaining a temporary restraining order or preliminary injunction compelling Defendants to comply with the trust provisions of the PACA and to set aside the trust funds in their possession. Alternatively, should this Court feel some bond is appropriate, no more than a nominal bond should be required.

VI. THE PACA TRUST BENEFICIARY IS ENTITLED TO RECOVER ATTORNEY'S FEES AND COSTS EXPENDED TO RECOVER AMOUNTS DUE AS WELL AS PREJUDGMENT AND POSTJUDGMENT INTEREST PURSUANT TO THE PROVISIONS OF THE PACA TRUST AND SPECIFIC AGREEMENT

PACA trust beneficiaries who are compelled to bring a lawsuit to prevent dissipation of PACA trust assets are entitled to recover reasonable attorney fees and other costs incurred thereby. *In re Monterey House, Inc.*, 71 B.R. 244 (Bankr. S.D. Texas 1986). *See also, In re Milton Poulos, Inc.*, 71 B.R. 244, 248 (Bankr. S.D. Tex. 1986); *Continental Sales Co. v. Billings*, No. 4-93-2763 (S.D. Tex. Mar. 6, 1996).

For these reasons, Plaintiff requests that they be reimbursed all interest, costs, and attorney's fees incurred in bringing this action.

VII. CONCLUSION

For all the foregoing reasons, Plaintiff's Motion for Temporary Restraining Order and Order to Show Cause re preliminary injunction should be granted.

DATED: March 10, 2005

CHURCH BROTHERS, LLC

By:



VALERIE CARTER, ESQ.

BBO No. 545412

Carter and Doyle, LLP

530 Atlantic Avenue, Third Floor

Russia Wharf West

Boston, MA 02210

Tel: (617) 348-0525

Fax: (617) 348-0989

E-Mail: vcarter@carterdoyle.com

ORIGINAL

FILED

03 JUL -3 AM 9:21

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

LEWIS P. JANOWSKY, SBN 092735
BART M. BOTTA, SBN 167051
RYNN & JANOWSKY, LLP
4100 Newport Place Drive, Suite 700
Newport Beach, CA 92660-2423
Telephone: (949) 752-2911

Attorneys for Plaintiff
VAL-PRO, INC.,
d/b/a VALLEY FRUIT & PRODUCE COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VAL-PRO, INC., a corporation doing
business as VALLEY FRUIT &
PRODUCE COMPANY,

Plaintiff,

v.

SKW PRODUCE, INC., a corporation;
MATTHEW M. KREMER, an individual;
MICHAEL DAVID WILLIAMS, an
individual; TODD R. SPITZER, an
individual,

Defendants.

CASE NO. 03 CV 1238 IEG AJB

~~PROPOSED~~ TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE
PRELIMINARY
INJUNCTION AND PROPOSED
PRELIMINARY INJUNCTION

Upon review of the Complaint of Plaintiff VAL-PRO, INC. d/b/a VALLEY
FRUIT & PRODUCE CO. (hereinafter referred to as "VFPC" or "Plaintiff"), on file in
the above-captioned action, and the declarations, exhibits and Memorandum of Points
and Authorities in support of Plaintiff's Motion for a Temporary Restraining Order
and/or Preliminary Injunction submitted therewith, and all documents, if any, provided by
Defendants, SKW PRODUCE, INC., a corporation; MATTHEW M. KREMER, an

03-203/SKW ProposedTRO.doc

EXHIBIT 1

LAW OFFICES
RYNN & JANOWSKY, LLP
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660-2423
(949) 752-2911
FAX (949) 752-0353

1 individual; MICHAEL DAVID WILLIAMS, an individual; TODD R. SPITZER, an
 2 individual, (hereinafter referred to collectively as "Defendants") in opposition thereto, if
 3 any, and it appearing to the satisfaction of the Court that this is a proper case for granting
 4 a Temporary Restraining Order and Order to Show Cause,
 5

6 IT IS HEREBY ORDERED that Defendants appear in Courtroom 13 of the
 7 U.S. District Court for the Southern District of California, 880 Front Street, San Diego,
 8 CA 92101-8900 on July 17, 2003, at 10:30 a.m., or as soon thereafter as the
 9 matter may be heard, then and there to show cause, if any they have, why they, their
 10 agents, bankers, subsidiaries, successors, assignees, principals, employees, attorneys, and
 11 representatives should not be restrained and preliminarily enjoined during the pendency
 12 of this action, pursuant to Rule 65 of the Federal Rules of Civil Procedure, from engaging
 13 in, committing, or performing directly and indirectly, any and all of the following acts:
 14

15 A. Removing, withdrawing, transferring, assigning or selling to any other
 16 person or entity, the proceeds from the sales of any or all existing or future inventories of
 17 food or other products derived from perishable agricultural commodities, and/or receipts
 18 of payment for products sold prior to the date of this order and/or otherwise disposing of
 19 assets, books or funds;
 20

21 B. Taking any other action whatsoever which causes, has the effect of causing,
 22 or which otherwise dissipates Plaintiff's beneficiary interests in trust assets of the
 23 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C. §499e *et seq.*];
 24

25 C. Taking any other action whatsoever which violates 7 U.S.C. §499e(c)(1)
 26 through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of PACA].
 27
 28

LAW OFFICES
 RYNN E. JANKOWSKY, LLP
 4103 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660-2423
 (949) 752-2911
 FAX (949) 752-0963

1 IT IS FURTHER ORDERED that Defendants, their officers, directors, bankers,
 2 agents, subsidiaries, successors, assignees, principals, assignors, attorneys and persons
 3 acting in concert with them, appear at the same time and place to show cause, if any they
 4 have, why they should not be commanded by order of this Court and required to
 5 distribute PACA trust assets in the amount of at least \$61,501.03 which includes
 6 \$57,161.89 the cumulative amount of the PACA trust principal owing to Plaintiffs, plus
 7 \$1,109.14 in finance charges accrued from the dates of default for each transaction
 8 through June 13, 2003 at the agreed-upon rate of 1½% per month (18% annually) and
 9 attorneys' fees *to be determined by the court.*
 10 ~~in the amount of \$3,080.00 and costs of \$150.00.~~

11 IT IS FURTHER ORDERED that pending the hearing and determination of the
 12 foregoing Order to Show Cause, Defendants, their agents, bankers, subsidiaries,
 13 successors, assignees, principals, attorneys, and persons acting in concert with them shall
 14 be and hereby are prevented from transferring, withdrawing or in any other manner
 15 removing Perishable Agricultural Commodities Act [7 U.S.C. §499e *et seq.*] trust assets,
 16 including funds on deposit in banking accounts held by or on behalf of Defendants, from
 17 Defendants' banking accounts, including but not limited to Defendants' accounts at Wells
 18 Fargo Bank 1350 Fashion Valley Road, San Diego, California 92108, account no.
 19 0828751610 or any other banking account subsequently determined to be standing in
 20 Defendants' names, or any one of them.

21 IT IS FURTHER ORDERED that pending the hearing and determination of the
 22 foregoing Order to Show Cause, and continuing thereafter, Defendants and their counsel,
 23 agents, or representatives, shall be preliminarily enjoined from engaging in, committing,
 24 or performing directly and indirectly, any and all of the following acts:

1 D. Removing, withdrawing, transferring, assigning or selling to any other
 2 person or entity, the proceeds from the sales of any or all existing or future inventories of
 3 food or other products derived from perishable agricultural commodities, and/or receipts
 4 of payment for products or crops sold prior to the date of this order and/or otherwise
 5 disposing of assets, books or funds;

7 E. Taking any other action whatsoever which causes, has the effect of causing,
 8 or which otherwise dissipates Plaintiff's beneficiary interests in the trust assets;

10 F. Taking any other action whatsoever which violates 7 U.S.C. §499c(c)(1)
 11 through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of Perishable Agricultural
 12 Commodities Act ("PACA)].

13 IT IS FURTHER ORDERED that in the event Defendants lack sufficient funds to
 14 promptly deposit the sums described above, Defendants shall be and hereby are required
 15 and ordered to:

17 G. Immediately account to the Court and Plaintiff for all assets of the PACA
 18 trust from commencement of Defendants' business through the date of this Order.

19 H. Immediately assign Defendants' produce related receivables to Plaintiff for
 20 collection until Plaintiff is fully paid, and deposit and/or deliver complete accounts,
 21 records, and information of all of said receivables to Plaintiff's counsel without charge to
 22 the trust, and subject to Plaintiff's counsel making a weekly accounting for all receivables
 23 received or collected by Plaintiff's counsel in that regard. Plaintiff's counsel shall act as
 24 trustee in connection with its duties of collection of the accounts receivable and shall
 25 deposit any cash assets of the trust which are collected under this order in a trust account.
 26
 27
 28

LAW OFFICES
 RYNN & JANOWSKY, LLP
 4100 NEWPORT PLACE DRIVE
 SUITE 100
 NEWPORT BEACH, CALIFORNIA 92660-2423
 (949) 752-2911
 FAX (949) 752-0853

1 I. Endorse any checks made, endorsed or paid, to Defendants which are trust
 2 assets and which are in their possession or obtainable by Defendants at the time of the
 3 entry of this Order, or which Defendants obtain or which become obtainable by
 4 Defendants after the entry of this Order, including but not limited to checks representing
 5 payment for sales of growing crops, and shall deliver said assets within 48 hours of
 6 Defendants' receipt of them to Plaintiff's counsel as set forth above. Likewise,
 7 Defendants shall deliver any cash assets of the PACA trust which are in its possession or
 8 are obtainable by Defendants at the time of the entry of this order, or which Defendants
 9 obtain or which become obtainable by Defendants after entry of this Order, within 48
 10 hours of Defendants' receipt of them to Plaintiff's counsel.

11 J. File weekly with this Court satisfactory evidence of compliance with the
 12 terms of this Order.

13 IT IS FURTHER ORDERED that pending the hearing and determination of the
 14 foregoing Order to Show Cause, and continuing thereafter, Plaintiff and its counsel,
 15 agents, or representatives, shall have full and complete and continuing access to all of
 16 Defendants' books and records, which shall include but not necessarily be limited to,
 17 Defendants' accounts receivable and payable ledgers, invoices, ledgers, computer runs,
 18 bank statements and canceled checks, relating to Defendants' business and personal
 19 financial status from commencement of Defendants' business activities forward for the
 20 purpose of verifying Defendants' accountings required by this Order and for enforcement
 21 of this Order. Defendants shall, upon 2 business days notice by Plaintiff's counsel, allow
 22 inspection and copying of the books and records of said Defendants by Plaintiff or its
 23 representatives at Defendants' place of business.

1 IT IS FURTHER ORDERED that pending the hearing and determination of the
 2 foregoing Order to Show Cause, and continuing thereafter, Plaintiff shall be entitled to
 3 depose, under oath, at reasonable times and places, upon at least 2 business days notice,
 4 Defendants and/or Defendants' other principals, owners, directors, officers, shareholders,
 5 employees, agents and accountants concerning any matter pertaining to any accounting
 6 due pursuant to this Order, any books or records which Plaintiff is entitled to inspect
 7 under this Order, the trust assets or any of Defendants' business assets, and/or
 8 Defendants' business practices, procedures or operations from commencement of
 9 Defendants' business activities.

12 IT IS FURTHER ORDERED that Plaintiff is to serve copies of this Order and all
 13 pleadings and other papers in support of the Order on or before July 8, 2003.
 14 Defendants shall file an Opposition, if any, to the Order to Show Cause on or before
 15 4:00 p.m. on July 14, 2003 and shall personally serve Plaintiff's counsel
 16 with a copy of said opposition by the same deadline. Plaintiff shall file and serve on
 17 Defendant a Reply to Defendants' Opposition on or before noon on
 18 July 16, 2003.

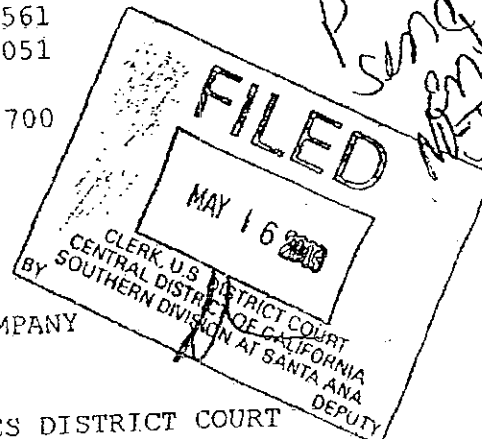
21 IT IS FURTHER ORDERED that no bond shall be required to be posted by
 22 Plaintiff before the Temporary Restraining Order is effective.

24 DATED: 7/2/03

Anna E. Gonzalez
 U.S. DISTRICT COURT JUDGE

R. JASON READ, State Bar No. 117561
 BART M. BOTTA, State Bar No. 167051
 RYNN & JANOWSKY
 4100 Newport Place Drive, Suite 700
 Newport Beach, CA 92660-2423
 Telephone: (949) 752-2911

Attorneys for Plaintiff
 VAL-PRO, INC.,
 d/b/a VALLEY FRUIT & PRODUCE COMPANY



IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

SACV03-741GLT(ANx)

CASE NO.

~~PROPOSED~~ TEMPORARY
 RESTRAINING ORDER AND ORDER
 TO SHOW CAUSE RE PRELIMINARY
 INJUNCTION AND PROPOSED
 PRELIMINARY INJUNCTION

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
 FAX DELIVERY ON PLAINTIFF/DEFENDANT (OR PARTIES)
 AT THEIR RESPECTIVE MOST RECENT FAX NUMBER OF RECORD
 IN THIS ACTION ON THIS DATE.

DATE: 5/16/03

DEPUTY CLERK

VAL-PRO INC., a corporation
 doing business as VALLEY
 FRUIT & PRODUCE COMPANY,

Plaintiff,

VZLA MANAGEMENT CO., INC., a
 corporation d/b/a CHIA PLUS
 SUPERMARKETS; ROSA C.
 HERNANDEZ, an individual;
 JAIME F. CHIA, a/k/a JAIME
 HERNANDEZ, an individual,

Defendants.

THIS CONSTITUTES NOTICE OF ENTRY
 MAY 19 2003 AS REQUIRED BY FRCP, RULE 77(d).

Don't review of the Complaint of Plaintiff VAL-PRO, INC.
 CLERK, U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA OFFICE
 BY: d/b/a VALLEY FRUIT & PRODUCE CO. (hereinafter referred to

as "VFPC" or "Plaintiff"), on file in the above-captioned
 action, and the declarations, exhibits and Memorandum of
 Points and Authorities in support of Plaintiff's Motion for
 a Temporary Restraining Order and/or Preliminary Injunction

ENTER ON ICMS

MAY 19 2003

ProposedTRO

LAW OFFICES
 RYNN & JANOWSKY
 4100 NEWPORT PLACE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660-2423
 (949) 752-2911
 FAX (949) 752-0953

CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SANTA ANA OFFICE

ENTERED

21

22

CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SANTA ANA OFFICE

BY: M

1 submitted therewith, ~~and all documents provided by~~
 2 Defendants VZLA MANAGEMENT CO., INC., a corporation d/b/a
 3 CHIA PLUS SUPERMARKETS; ROSA C. HERNANDEZ, an individual;
 4 ~~JAIIME F. CHIA, a/k/a JAIIME F. HERNANDEZ, an individual,~~
 5 hereinafter referred to collectively as "Defendants") in
 6 opposition thereto, if any/ and it appearing to the
 7 satisfaction of the Court that this is a proper case for
 8 granting a Temporary Restraining Order and Order to Show
 9 Cause,

10 IT IS HEREBY ORDERED that Defendants appear in
 11 Courtroom 10D of the U.S. District Court for the Central
 12 District of California, Santa Ana Division, 411 Fourth
 13 Street, Santa Ana, CA 92701 on May 27, 2003, at
 14 10:00a.m., or as soon thereafter as the matter may be
 15 heard, then and there to show cause, if any they have, why
 16 they, their agents, bankers, subsidiaries, successors,
 17 assignees, principals, employees, attorneys, and
 18 representatives should not be restrained and preliminarily
 19 enjoined during the pendency of this action, pursuant to
 20 Rule 65 of the Federal Rules of Civil Procedure, from
 21 engaging in, committing, or performing directly and
 22 indirectly, any and all of the following acts:

23 A. Removing, withdrawing, transferring, assigning or
 24 selling to any other person or entity, the proceeds from
 25 the sales of any or all existing or future inventories of
 26 food or other products derived from perishable agricultural
 27 commodities, and/or receipts of payment for products sold
 28

LAW OFFICES
 RYNN & JANOWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660-2423
 (949) 752-2911
 FAX (949) 752-0953

1 prior to the date of this order and/or otherwise disposing
2 of assets, books or funds;

3 B. Taking any other action whatsoever which causes,
4 has the effect of causing, or which otherwise dissipates
5 Plaintiff's beneficiary interests in trust assets of the
6 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C.
7 §499e et seq.];

8 C. Taking any other action whatsoever which violates
9 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.
10 §499b(4) [§2 of PACA].

11 IT IS FURTHER ORDERED that Defendants, their officers,
12 directors, bankers, agents, subsidiaries, successors,
13 assignees, principals, assignors, attorneys and persons
14 acting in concert with them, appear at the same time and
15 place to show cause, if any they have, why they should not
16 be commanded by order of this Court and required to
17 distribute PACA trust assets in the amount of at least
18 \$82,720.66, which includes \$77,303.28, the cumulative
19 amount of the PACA trust principal owing to Plaintiffs,
20 plus \$2,187.38 in finance charges accrued from the dates of
21 default for each transaction through May 15, 2003 at the
22 agreed-upon rate of 1½% per month (18% annually) and
23 attorneys' fees in the amount of \$3,080.00 and costs of
24 \$150.00.

25 IT IS FURTHER ORDERED that pending the hearing and
26 determination of the foregoing Order to Show Cause,
27 Defendants, their agents, bankers, subsidiaries,
28 successors, assignees, principals, attorneys, and persons

LAW OFFICES
RYNN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660-2423
(949) 752-2911
FAX (949) 752-0953

1 acting in concert with them shall be and hereby are
 2 prevented from transferring, withdrawing or in any other
 3 manner removing Perishable Agricultural Commodities Act [7
 4 U.S.C. §499e et seq.] trust assets, including funds on
 5 deposit in banking accounts held by or on behalf of
 6 Defendants, from Defendants' banking accounts, including
 7 but not limited to Defendants' s accounts at California
 8 Bank & Trust, Anaheim Branch, Anaheim, California account
 9 no. 308000361 or any other banking account subsequently
 10 determined to be standing in Defendants' name's, or any one
 11 of them.

12 IT IS FURTHER ORDERED that pending the hearing and
 13 determination of the foregoing Order to Show Cause, and
 14 continuing thereafter, Defendants and their counsel,
 15 agents, or representatives, shall be preliminarily enjoined
 16 from engaging in, committing, or performing directly and
 17 indirectly, any and all of the following acts:

18 D. Removing, withdrawing, transferring, assigning or
 19 selling to any other person or entity, the proceeds from
 20 the sales of any or all existing or future inventories of
 21 food or other products derived from perishable agricultural
 22 commodities, and/or receipts of payment for products or
 23 crops sold prior to the date of this order and/or otherwise
 24 disposing of assets, books or funds;

25 E. Taking any other action whatsoever which causes,
 26 has the effect of causing, or which otherwise dissipates
 27 Plaintiff's beneficiary interests in the trust assets;
 28

LAW OFFICES
 RYNN & JANDOWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660-2423
 (949) 752-2911
 FAX (949) 752-0853

1 F. Taking any other action whatsoever which violates
2 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.
3 §499b(4) [§2 of Perishable Agricultural Commodities Act
4 ("PACA)].

5 IT IS FURTHER ORDERED that in the event Defendants lack
6 sufficient funds to promptly deposit the sums described
7 above, Defendants shall be and hereby are required and
8 ordered to:

9 G. Immediately account to the Court and Plaintiff for
10 all assets of the PACA trust from commencement of
11 Defendants' business through the date of this Order.

12 H. Immediately assign Defendants' produce related
13 receivables to Plaintiff for collection until Plaintiff is
14 fully paid, and deposit and/or deliver complete accounts,
15 records, and information of all of said receivables to
16 Plaintiff's counsel without charge to the trust, and
17 subject to Plaintiff's counsel making a weekly accounting
18 for all receivables received or collected by Plaintiff's
19 counsel in that regard. Plaintiff's counsel shall act as
20 trustee in connection with its duties of collection of the
21 accounts receivable and shall deposit any cash assets of
22 the trust which are collected under this order in a trust
23 account.

24 I. Endorse any checks made, endorsed or paid, to
25 Defendants which are trust assets and which are in their
26 possession or obtainable by Defendants at the time of the
27 entry of this Order, or which Defendants obtain or which
28 become obtainable by Defendants after the entry of this

LAW OFFICES
RYNN A. JAMOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660-2423
(949) 752-2911
FAX (949) 752-0953

1 Order, including but not limited to checks representing
 2 payment for sales of growing crops, and shall deliver said
 3 assets within 48 hours of Defendants' receipt of them to
 4 Plaintiff's counsel as set forth above. Likewise,
 5 Defendants shall deliver any cash assets of the PACA trust
 6 which are in its possession or are obtainable by Defendants
 7 at the time of the entry of this order, or which Defendants
 8 obtain or which become obtainable by Defendants after entry
 9 of this Order, within 48 hours of Defendants' receipt of
 10 them to Plaintiff's counsel.

11 J. File weekly with this Court satisfactory evidence
 12 of compliance with the terms of this Order.

13 IT IS FURTHER ORDERED that pending the hearing and
 14 determination of the foregoing Order to Show Cause, and
 15 continuing thereafter, Plaintiff and its counsel, agents,
 16 or representatives, shall have full and complete and
 17 continuing access to all of Defendants' books and records,
 18 which shall include but not necessarily be limited to,
 19 Defendants' accounts receivable and payable ledgers,
 20 invoices, ledgers, computer runs, bank statements and
 21 canceled checks, relating to Defendants' business and
 22 personal financial status from commencement of Defendants'
 23 business activities forward for the purpose of verifying
 24 Defendants' accountings required by this Order and for
 25 enforcement of this Order. Defendants shall, upon 2
 26 business days notice by Plaintiff's counsel, allow
 27 inspection and copying of the books and records of said
 28

LAW OFFICES
 RYNN & JANOWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660-2423
 (949) 752-2911
 FAX (949) 752-0853

1 Defendants by Plaintiff or its representatives at
 2 Defendants' place of business.

3 IT IS FURTHER ORDERED that pending the hearing and
 4 determination of the foregoing Order to Show Cause, and
 5 continuing thereafter, Plaintiff shall be entitled to
 6 depose, under oath, at reasonable times and places, upon at
 7 least 2 business days notice, Defendants and/or Defendants'
 8 other principals, owners, directors, officers,
 9 shareholders, employees, agents and accountants concerning
 10 any matter pertaining to any accounting due pursuant to
 11 this Order, any books or records which Plaintiff is
 12 entitled to inspect under this Order, the trust assets or
 13 any of Defendants' business assets, and/or Defendants'
 14 business practices, procedures or operations from
 15 commencement of Defendants' business activities.

16 IT IS FURTHER ORDERED that Plaintiff is to serve copies
 17 of this Order and all pleadings and other papers in support
 18 of the Order on or before May 19, 2003. Defendants shall
 19 file an Opposition, if any, to the Order to Show Cause on
 20 or before 3:00 p.m. on May 21, 2003, 2003 and shall
 21 personally serve Plaintiff's counsel with a copy of said
 22 opposition by the same deadline. Plaintiff shall file and
 23 serve on Defendant a Reply to Defendants' Opposition on or
 24 before 1:00 p.m. on May 23, 2003, 2003.

25 / / /

26 / / /

27

28

LAW OFFICES
 RYNN & JANOWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660-2423
 (949) 752-2911
 FAX (949) 752-0953

1 IT IS FURTHER ORDERED that ~~the~~ bond shall be required to
2 be posted by Plaintiff before the Temporary Restraining
3 Order is effective. in the amount of \$20,000⁰⁰

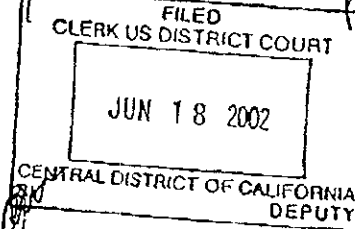
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5 DATED: May 16, 2003

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28
U.S. DISTRICT COURT JUDGE

LOVELL OFFICES
RYNN & JAHOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660-2423
(949) 752-2911
FAX (949) 752-0953

1 R. JASON READ, SBN 117561
 2 MINDY L. JAMES, SBN 197226
 3 RYNN & JANOWSKY
 4 4100 Newport Place Drive, Suite 700
 5 Newport Beach, CA 92660
 6 Telephone: (949) 752-2911
 7 Facsimile: (949) 752-0953

8 Attorneys for Plaintiff
 9 MALENA PRODUCE, INC.



10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 MALENA PRODUCE, INC., a
 13 corporation,

14 Plaintiff,

15 v.

16 HUGO IRAHETA, individually
 17 and doing business as HUGO
 18 PRODUCE COMPANY,

19 Defendants.

20 CASE NO. 02-04795

21 ~~RESTRAINING~~ TEMPORARY
 22 RESTRAINING ORDER AND
 23 ORDER TO SHOW CAUSE RE
 24 PRELIMINARY INJUNCTION AND
 25 PROPOSED PRELIMINARY
 26 INJUNCTION

27 Upon review of the Complaint of Plaintiff MALENA
 28 PRODUCE, INC. ("Malena" or "Plaintiff"), on file in the
 above-captioned action, and the declarations, exhibits and
 Memorandum of Points and Authorities in support of
 Plaintiff's Motion for a Temporary Restraining Order and/or
 Preliminary Injunction submitted therewith, and any and all
 documents provided by Defendants HUGO IRAHETA, individually
 and doing business as HUGO PRODUCE COMPANY (hereinafter
 referred to collectively as "Defendants") in opposition

LAW OFFICES
 RYNN & JANOWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660
 (949) 752-2911
 FAX (949) 752-0953
 LOGGED

thereto, and it appearing to the satisfaction of the Court that this is a proper case for granting a Temporary Restraining Order and Order to Show Cause,

IT IS HEREBY ORDERED that Defendants appear in Courtroom 750 of the U.S. District Court for the Central District of California, 255 E. Temple St., Los Angeles, California 90012 on ^{Tuesday} July 2, 2002, at 3:00 p.m., or as soon thereafter as the matter may be heard, then and there to show cause, if any they have, why they, their agents, bankers, subsidiaries, successors, assignees, principals, employees, attorneys, and representatives should not be restrained and preliminarily enjoined during the pendency of this action, pursuant to Rule 65 of the Federal Rules of Civil Procedure, from engaging in, committing, or performing directly and indirectly, any and all of the following acts:

A. Removing, withdrawing, transferring, assigning or selling to any other person or entity, the proceeds from the sales of any or all existing or future inventories of food or other products derived from perishable (including frozen) agricultural commodities, and/or receipts of payment for products sold prior to the date of this order and/or otherwise disposing of assets, books or funds;

B. Taking any other action whatsoever which causes, has the effect of causing, or which otherwise dissipates Plaintiff's beneficiary interests in trust assets of the

LAW OFFICES
RYNN & JAKOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(949) 752-2011
FAX (949) 752-0953

1 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C.
2 §499e et seq.];

3 C. Taking any other action whatsoever which violates
4 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.
5 §499b(4) [§2 of PACA].

6 IT IS FURTHER ORDERED that Defendants, their owners,
7 officers, directors, bankers, agents, subsidiaries,
8 successors, assignees, principals, assignors, attorneys and
9 persons acting in concert with them, appear at the same
10 time and place to show cause, if any they have, why they
11 should not be commanded by order of this Court and required
12 to distribute PACA trust assets in the amount of at least
13 \$70,566.87, which includes \$65,098.25, the cumulative
14 amount of the PACA Trust principal owing to Plaintiff, plus
15 \$1,963.62 in interest accrued from the dates of default for
16 each transactions through June 13, 2002 at a rate of 10%
17 per annum and attorneys' fees in the amount of \$3,355.00
18 and costs of \$150.00.

19 IT IS FURTHER ORDERED that pending the hearing and
20 determination of the foregoing Order to Show Cause,
21 Defendants, their agents, bankers, subsidiaries,
22 successors, assignees, principals, attorneys, and persons
23 acting in concert with them shall be and hereby are
24 prevented from transferring, withdrawing or in any other
25 manner removing Perishable Agricultural Commodities Act [7
26 U.S.C. §499e et seq.] trust assets, including funds on
27 deposit in banking accounts held by or on behalf of
28

LAW OFFICES
RYNN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(949) 752-2911
FAX (949) 752-0933

1 Defendants, from Defendants' banking accounts, including
 2 but not limited to account number 09899-06398, at the Bank
 3 of America, 10200 Reseda Blvd., Northridge, California
 4 91324 from Defendants' banking accounts.

5 IT IS FURTHER ORDERED that pending the hearing and
 6 determination of the foregoing Order to Show Cause, ~~and~~
 7 ~~continuing thereafter~~, Defendants and their counsel,
 8 agents, or representatives, shall be preliminarily enjoined
 9 from engaging in, committing, or performing directly and
 10 indirectly, any and all of the following acts:

11 D. Removing, withdrawing, transferring, assigning or
 12 selling to any other person or entity, the proceeds from
 13 the sales of any or all existing or future inventories of
 14 food or other products derived from perishable agricultural
 15 commodities, and/or receipts of payment for products or
 16 crops sold prior to the date of this order and/or otherwise
 17 disposing of ^{trust} assets, books or funds;

18 E. Taking any other action whatsoever which causes,
 19 has the effect of causing, or which otherwise dissipates
 20 Plaintiff's beneficiary interests in the trust assets;

21 F. Taking any other action whatsoever which violates
 22 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.
 23 §499b(4) [§2 of Perishable Agricultural Commodities Act
 24 ("PACA)].

25 IT IS FURTHER ORDERED that in the event Defendants lack
 26 sufficient funds to promptly deposit the sums described
 27
 28

LAW OFFICES
 RYAN A. JANOWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660
 (949) 752-2911
 FAX (949) 752-0953

1 above, Defendants shall be and hereby are required and
2 ordered to:

3 G. Immediately account to the Court and Plaintiff for
4 all assets of the PACA trust from commencement of
5 Defendants' business through the date of this Order.

6 H. Immediately assign Defendants' inventory of
7 perishable agricultural commodities and produce related
8 receivables to Plaintiff for sale and collection until
9 Plaintiff is fully paid, and deposit and/or deliver
10 complete accounts, records, and information of all of said
11 receivables to Plaintiff's counsel without charge to the
12 trust, and subject to Plaintiff's counsel making a weekly
13 accounting for all receivables received or collected by
14 Plaintiff's counsel in that regard. Plaintiff's counsel
15 shall act as trustee in connection with its duties of
16 collection of the accounts receivable and shall deposit any
17 cash assets of the trust which are collected under this
18 order in a trust account. In Plaintiff's sole discretion,
19 to the extent necessary to prevent loss of Defendant's
20 inventory of perishable agricultural commodities through
21 decay, over-ripening, spoliation or improper storage or
22 handling; Plaintiff may immediately take possession of any
23 such inventory and sell such inventory through a PACA
24 licensed broker. The proceeds of any such sales shall be
25 held in trust by Plaintiff's counsel pending further order
26 of this court. Any broker retained by Plaintiff or
27 Plaintiff's counsel to effectuate such sales may retain a
28

LAW OFFICES
RYAN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(949) 752-2911
FAX (949) 752-0953

1 brokerage commission in an amount reasonable and customary
 2 in the produce industry. The U.S. Marshal shall
 3 immediately assist Plaintiff in any manner reasonably
 4 necessary to accomplish the sales that are the subject of
 5 this agreement.

6 I. Endorse any checks made, endorsed or paid, to
 7 Defendants which are trust assets and which are in their
 8 possession or obtainable by Defendants at the time of the
 9 entry of this Order, or which Defendants obtain or which
 10 become obtainable by Defendants after the entry of this
 11 Order, including but not limited to checks representing
 12 payment for sales of inventory, and shall deliver said
 13 assets within 48 hours of Defendants' receipt of them to
 14 Plaintiff's counsel as set forth above. Likewise,
 15 Defendants shall deliver any cash assets of the PACA trust
 16 which are in its possession or are obtainable by Defendants
 17 at the time of the entry of this order, or which Defendants
 18 obtain or which become obtainable by Defendants after entry
 19 of this Order, within 48 hours of Defendants' receipt of
 20 them to Plaintiff's counsel.

21 J. File ~~weekly~~ ^{at the time of the hearing} with this Court satisfactory evidence
 22 of compliance with the terms of this Order.

23 IT IS FURTHER ORDERED that pending the hearing and
 24 determination of the foregoing Order to Show Cause, ~~and~~
 25 ~~continuing thereafter~~, Plaintiff and their counsel, agents,
 26 or representatives, shall have full and complete and
 27 continuing access to all of Defendants' books and records.
 28

1 which shall include but not necessarily be limited to,
2 Defendants' accounts receivable and payable ledgers,
3 invoices, ledgers, computer runs, bank statements and
4 canceled checks, relating to Defendants' business and
5 personal financial status from commencement of Defendants'
6 business activities forward for the purpose of verifying
7 Defendants' accountings required by this Order and for
8 enforcement of this Order. Defendants shall, upon 48 hours
9 notice by Plaintiff's counsel, allow inspection and copying
10 of the books and records of said Defendants by Plaintiff or
11 its representatives at Defendants' place of business.

12 IT IS FURTHER ORDERED that pending the hearing and
13 determination of the foregoing Order to Show Cause, ~~and~~
14 ~~continuing thereafter~~, Plaintiff shall be entitled to
15 depose, under oath, at reasonable times and places, upon at
16 least 48 hours notice, Defendants and/or Defendants' other
17 principals, owners, directors, officers, shareholders,
18 employees, agents and accountants concerning any matter
19 pertaining to any accounting due pursuant to this Order,
20 any books or records which Plaintiff are entitled to
21 inspect under this Order, the trust assets or any of
22 Defendants' business assets, and/or Defendants' business
23 practices, procedures or operations from commencement of
24 Defendants' business activities.

25 IT IS FURTHER ORDERED that Plaintiff shall serve
26 Defendants with copies of this Order and all pleadings and
27 other papers in support of the Order on or before
28

ANN OFFICES
AYNN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(949) 752-2811
FAX (949) 752-0853

Jun-18-2002 02:36pm From:

2136845528

1-218 P 098/008 T-108

1 June 19, 2002 ^{by 5 p.m.} Defendants shall file an Opposition, if
 2 any, to the Order to Show Cause on or before ~~June 19, 2002~~ ^{5 p.m.} on
 3 June 27, 2002 and shall personally serve Plaintiff's
 4 counsel with a copy of said opposition by the same
 5 deadline. ~~Plaintiff shall file and serve on Defendant a~~
 6 ~~Reply to Defendants' Opposition on or before _____ m. on~~
 7 _____

8 IT IS FURTHER ORDERED that no bond shall be required to
 9 be posted by Plaintiff before the Temporary Restraining
 10 Order is effective.

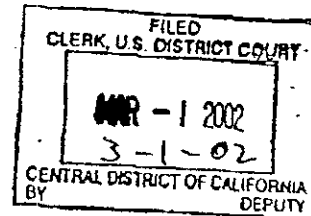
DATED:

June 18, 2002 Florence-Marie Lopez
 U.S. DISTRICT COURT JUDGE

4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660
 (949) 752-2911
 FAX (949) 752-0953

LODGED

1 R. JASON READ, SBN 117564
 2 MINDY L. JAMES, SBN 197226
 3 RYNN & JANOWSKY
 4 4100 Newport Place Drive, Suite 700
 5 Newport Beach, CA 92660
 6 Telephone: (949) 752-2911
 7 Facsimile: (949) 752-0953



8 Attorneys for Plaintiff
 9 MEYER TOMATOES, LLC

10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 MEYER TOMATOES, LLC, a
 13 limited liability company,

14 Plaintiff,

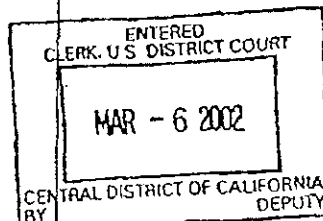
15 v.

16 FNT PRODUCE CO., INC., a
 17 corporation; FRANK P.
 18 AGUIRRE, an individual;
 19 AMANDA AGUIRRE, an
 20 individual,

21 Defendants.

CASE NO.

02-01789
 [PROPOSED] TEMPORARY
 RESTRAINING ORDER AND
 ORDER TO SHOW CAUSE RE
 PRELIMINARY INJUNCTION AND
 PROPOSED PRELIMINARY
 INJUNCTION



Priority
 Send ☒
 Enter ☒
 Closed ☐
 JS-5/JS-6 ☐
 JS-2/JS-3 ☐
 Scan Only ☐

22 Upon review of the Complaint of Plaintiff MEYER
 23 TOMATOES, LLC ("Meyer" or "Plaintiff"), on file in the
 24 above-captioned action, and the declarations, exhibits and
 25 Memorandum of Points and Authorities in support of
 26 Plaintiff's Motion for a Temporary Restraining Order and/or
 27 Preliminary Injunction submitted therewith, and any and all
 28 documents provided by Defendants FNT PRODUCE CO., INC.,
 FRANK P. AGUIRRE, and AMANDA AGUIRRE (hereinafter referred

✓ Docketed
 ✓ Copies / NTC Sent
 20 JS-5/JS-6
 — JS-2/JS-3

RYNN & JANOWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660
 (949) 752-2811
 FAX (949) 752-0953

1 to collectively as "Defendants") in opposition thereto,
2 and it appearing to the satisfaction of the Court that this
3 is a proper case for granting a Temporary Restraining Order
4 and Order to Show Cause,

5 IT IS HEREBY ORDERED that Defendants appear in
6 Courtroom 880 of the U.S. District Court for the Central
7 District of California, 255 E. Temple St., Los Angeles,
8 California 90012 on March 14, 2002, at 1:30 p.m.,
9 or as soon thereafter as the matter may be heard, then and
10 there to show cause, if any they have, why they, their
11 agents, bankers, subsidiaries, successors, assignees,
12 principals, employees, attorneys, and representatives
13 should not be restrained and preliminarily enjoined during
14 the pendency of this action, pursuant to Rule 65 of the
15 Federal Rules of Civil Procedure, from engaging in,
16 committing, or performing directly and indirectly, any and
17 all of the following acts:

18 A. Removing, withdrawing, transferring, assigning or
19 selling to any other person or entity, the proceeds from
20 the sales of any or all existing or future inventories of
21 food or other products derived from perishable (including
22 frozen) agricultural commodities, and/or receipts of
23 payment for products sold prior to the date of this order
24 and/or otherwise disposing of assets, books or funds;

25 B. Taking any other action whatsoever which causes,
26 has the effect of causing, or which otherwise dissipates
27 Plaintiff's beneficiary interests in trust assets of the
28

CLYDE A. BANCHEWAY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(949) 782-2811
FAX (949) 752-0853

1 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C.
2 §499e et seq.];

3 C. Taking any other action whatsoever which violates
4 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.
5 §499b(4) [§2 of PACA].

6 IT IS FURTHER ORDERED that Defendants, their officers,
7 directors, bankers, agents, subsidiaries, successors,
8 assignees, principals, assignors, attorneys and persons
9 acting in concert with them, appear at the same time and
10 place to show cause, if any they have, why they should not
11 be commanded by order of this Court and required to
12 distribute PACA trust assets in the amount of at least
13 \$51,517.65, which includes \$46,340.95, the cumulative
14 amount of the PACA Trust principal owing to Plaintiff, plus
15 \$1,396.70 in finance charges accrued from the dates of
16 default for each transactions through February 28, 2002 at
17 a rate of 18% per annum pursuant to 45 Fed.Reg. 37,872
18 (1980) and attorneys' fees in the amount of \$3,630.00 and
19 costs of \$150.00.

20 IT IS FURTHER ORDERED that pending the hearing and
21 determination of the foregoing Order to Show Cause,
22 Defendants, their agents, bankers, subsidiaries,
23 successors, assignees, principals, attorneys, and persons
24 acting in concert with them shall be and hereby are
25 prevented from transferring, withdrawing or in any other
26 manner removing Perishable Agricultural Commodities Act [7
27 U.S.C. §499e et seq.] trust assets, including funds on
28

RYAN A. SCHULZ
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(949) 762-2811
FAX (949) 752-0862

IT IS FURTHER ORDERED that in the event Defendants lack sufficient funds to promptly deposit the sums described

1 above, Defendants shall be and hereby are required and
2 ordered to:

3 G. Immediately account to the Court and Plaintiff for
4 all assets of the PACA trust from commencement of
5 Defendants' business through the date of this Order.

6 H. Immediately assign Defendants' inventory of
7 perishable agricultural commodities and produce related
8 receivables to Plaintiff for sale and collection until
9 Plaintiff is fully paid, and deposit and/or deliver
10 complete accounts, records, and information of all of said
11 receivables to Plaintiff's counsel without charge to the
12 trust, and subject to Plaintiff's counsel making a weekly
13 accounting for all receivables received or collected by
14 Plaintiff's counsel in that regard. Plaintiff's counsel
15 shall act as trustee in connection with its duties of
16 collection of the accounts receivable and shall deposit any
17 cash assets of the trust which are collected under this
18 order in a trust account. In Plaintiff's sole discretion,
19 to the extent necessary to prevent loss of Defendant's
20 inventory of perishable agricultural commodities through
21 decay, over-ripening, spoliation or improper storage or
22 handling; Plaintiff may immediately take possession of any
23 such inventory and sell such inventory through a PACA
24 licensed broker. The proceeds of any such sales shall be
25 held in trust by Plaintiff's counsel pending further order
26 of this court. Any broker retained by Plaintiff or
27 Plaintiff's counsel to effectuate such sales may retain a
28

RYAN & JACOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(949) 792-2811
FAX (949) 762-0953

1 brokerage commission in an amount reasonable and customary
2 in the produce industry. The U.S. Marshal shall
3 immediately assist Plaintiff in any manner reasonably
4 necessary to accomplish the sales that are the subject of
5 this agreement.

6 I. Endorse any checks made, endorsed or paid, to
7 Defendants which are trust assets and which are in their
8 possession or obtainable by Defendants at the time of the
9 entry of this Order, or which Defendants obtain or which
10 become obtainable by Defendants after the entry of this
11 Order, including but not limited to checks representing
12 payment for sales of inventory, and shall deliver said
13 assets within 48 hours of Defendants' receipt of them to
14 Plaintiff's counsel as set forth above. Likewise,
15 Defendants shall deliver any cash assets of the PACA trust
16 which are in its possession or are obtainable by Defendants
17 at the time of the entry of this order, or which Defendants
18 obtain or which become obtainable by Defendants after entry
19 of this Order, within 48 hours of Defendants' receipt of
20 them to Plaintiff's counsel.

21 J. File weekly with this Court satisfactory evidence
22 of compliance with the terms of this Order.

23 IT IS FURTHER ORDERED that pending the hearing and
24 determination of the foregoing Order to Show Cause, and
25 continuing thereafter, Plaintiff and their counsel, agents,
26 or representatives, shall have full and complete and
27 continuing access to all of Defendants' books and records,
28

RYAN & JAROWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(849) 782-2811
FAX (849) 752-0883

1 which shall include but not necessarily be limited to,
2 Defendants' accounts receivable and payable ledgers,
3 invoices, ledgers, computer runs, bank statements and
4 canceled checks, relating to Defendants' business and
5 personal financial status from commencement of Defendants'
6 business activities forward for the purpose of verifying
7 Defendants' accountings required by this Order and for
8 enforcement of this Order. Defendants shall, upon 48 hours
9 notice by Plaintiff's counsel, allow inspection and copying
10 of the books and records of said Defendants by Plaintiff or
11 its representatives at Defendants' place of business.

12 IT IS FURTHER ORDERED that pending the hearing and
13 determination of the foregoing Order to Show Cause, and
14 continuing thereafter, Plaintiff shall be entitled to
15 depose, under oath, at reasonable times and places, upon at
16 least 48 hours notice, Defendants and/or Defendants' other
17 principals, owners, directors, officers, shareholders,
18 employees, agents and accountants concerning any matter
19 pertaining to any accounting due pursuant to this Order,
20 any books or records which Plaintiff are entitled to
21 inspect under this Order, the trust assets or any of
22 Defendants' business assets, and/or Defendants' business
23 practices, procedures or operations from commencement of
24 Defendants' business activities.

25 IT IS FURTHER ORDERED that Plaintiff shall serve
26 Defendants with copies of this Order and all pleadings and
27 other papers in support of the Order on or before
28

RYAN A. JANCOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660
(949) 782-2911
FAX (949) 782-0863

1 March 5, 2002. Defendants shall file an Opposition, if
 2 any, to the Order to Show Cause on or before 3:00 p.m. on
 3 March 11, 2002. and shall personally serve Plaintiff's
 4 counsel with a copy of said opposition by the same
 5 deadline. Plaintiff shall file and serve on Defendant a
 6 Reply to Defendants' Opposition on or before 3:00 p.m. on
 7 March 13, 2002.

8 IT IS FURTHER ORDERED that no bond shall be required to
 9 be posted by Plaintiff before the Temporary Restraining
 10 Order is effective.

11
 12
 13 DATED: March 1, 2002

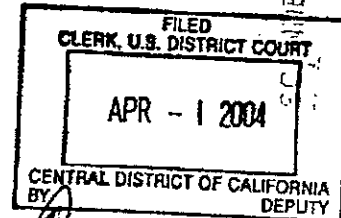
DICKRAN TEVRIZIAN

U.S. DISTRICT COURT JUDGE

LAW OFFICES
 RYNN & JAROWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660
 (949) 752-2917
 FAX (949) 752-0953

1 R. JASON READ, State Bar No. 117561
 2 MINDY JAMES NILI, State Bar No. 197226
 3 RYNN & JANOWSKY, LLP
 4 4100 Newport Place Drive, Suite 700
 5 Newport Beach, CA 92660-2423
 6 Telephone: (949) 752-2911

Attorneys for Plaintiff
 GRANDVIEW RANCH, INC.

Priority ☒Send ☒Enter ☐Closed ☐JS-5/JS-6 ☐JS-2/JS-3 ☐Scan Only ☐

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION

CV 04 - 02159 JFW Ex

GRANDVIEW RANCH, INC., a CASE NO.
 Corporation,

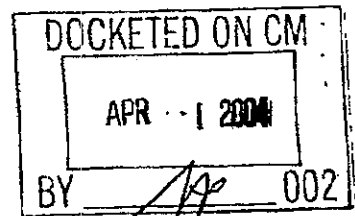
Plaintiff,

v.

HALUM MARKETS, INC., a
 corporation doing business
 as COACHELLA RANCH MARKET;
 ABŞA, INC., a corporation
 doing business as EL SUPER
 TORO LOCO; ABESUD D. HALUM,
 a/k/a ABBY HALUM, an
 individual; MONA HALUM, an
 individual,

Defendants.

[PROPOSED] TEMPORARY
 RESTRAINING ORDER AND ORDER
 TO SHOW CAUSE RE PRELIMINARY
 INJUNCTION AND PROPOSED
 PRELIMINARY INJUNCTION



Upon review of the Complaint of Plaintiff GRANDVIEW
 RANCH, INC. (hereinafter referred to as "Grandview" or
 "Plaintiff"), on file in the above-captioned action, and
 the declarations, exhibits and Memorandum of Points and
 Authorities in support of Plaintiff's Motion for a

LOGGED
 LAW OFFICES
 RYNN & JANOWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660-2423
 (949) 752-2911
 FAX (949) 752-0853

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1 Temporary Restraining Order and/or Preliminary Injunction
 2 submitted therewith, and ~~all documents provided~~ ^{as a result of} by
 3 Defendants HALUM MARKETS, INC. ("HMI"), a corporation doing
 4 business as COACHELLA RANCH MARKET ("CRM"), ABSA, INC.
 5 ("ABSA"), a corporation doing business as EL SUPER TORO
 6 LOCO ("Toro Loco"), ABESUD D. HALUM, a/k/a ABBY HALUM
 7 ("AH"), and MONA HALUM ("MH"), (hereinafter referred to
 8 collectively as "Defendants"), ^{failure to file an} ~~in~~ opposition thereto, ~~if~~
 9 ~~any~~, and it appearing to the satisfaction of the Court that
 10 this is a proper case for granting a Temporary Restraining
 11 Order and Order to Show Cause,

12 IT IS HEREBY ORDERED that Defendants HMI, CRM and ABSA
 13 appear in Courtroom 16 of the U.S. District Court for the
 14 Central District of California, ^{312 North Spring Street} ~~Riverside Division, 3470~~
 15 ^{Los Angeles, CA 90012} ~~Twelfth Street, Riverside, CA 92501~~ on ^{April 12} ~~March~~, 2004, at ^{1:30}
 16 P.m., or as soon thereafter as the matter may be heard,
 17 then and there to show cause, if any they have, why they,
 18 their agents, bankers, subsidiaries, successors, assignees,
 19 transferees, principals, employees, attorneys, and
 20 representatives should not be restrained and preliminarily
 21 enjoined during the pendency of this action, pursuant to
 22 Rule 65 of the Federal Rules of Civil Procedure, from
 23 engaging in, committing, or performing directly and
 24 indirectly, any and all of the following acts:

25 A. Removing, withdrawing, transferring, assigning or
 26 selling to any other person or entity, the proceeds from
 27 the sales of any or all existing or future inventories of
 28 food or other products derived from perishable agricultural

LAW OFFICES
 RYNN & JANOWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92660-2423
 (949) 752-2911
 FAX (949) 752-0953

1 commodities, and/or receipts of payment for products sold
 2 prior to the date of this order and/or otherwise disposing
 3 of assets, books or funds;

4 B. Taking any other action whatsoever which causes,
 5 has the effect of causing, or which otherwise dissipates
 6 Plaintiff's beneficiary interests in trust assets of the
 7 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C.
 8 §499e et seq.];

9 C. Taking any other action whatsoever which violates
 10 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.
 11 §499b(4) [§2 of PACA].

12 IT IS FURTHER ORDERED that Defendants HMI, CRM and ABSA
 13 and their fictitious businesses, their officers, directors,
 14 bankers, agents, subsidiaries, successors, assignees,
 15 principals, assignors, attorneys and persons acting in
 16 concert with them, appear at the same time and place to
 17 show cause, if any they have, why they should not be
 18 commanded by order of this Court and required to distribute
 19 PACA trust assets in the amount of at least \$99,709.96,
 20 which includes \$97,989.20, the cumulative amount of the
 21 PACA trust principal owing to Plaintiffs, plus \$1,720.76 in
 22 finance charges accrued from the dates of default for each
 23 transaction through March 30, 2004 at the agreed-upon rate
 24 of 1½% per month (18% annually).

25 IT IS FURTHER ORDERED that pending the hearing and
 26 ~~determination~~ of the foregoing Order to Show Cause,
 27 Defendants HMI, CRM and ABSA and their fictitious
 28 businesses, their agents, bankers, subsidiaries,

LAW OFFICES
 RYNN & JANOWSKY
 4100 NEWPORT PLACE DRIVE
 SUITE 700
 NEWPORT BEACH, CALIFORNIA 92680-2423
 (949) 752-2911
 FAX (949) 752-0853

LAW OFFICES
RYNN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660-2423
(949) 752-2811
FAX (949) 752-0853

successors, assignees, principals, attorneys, and persons acting in concert with them shall be and hereby are prevented from transferring, withdrawing or in any other manner removing Perishable Agricultural Commodities Act [7 U.S.C. §499e et seq.] trust assets, including funds on deposit in banking accounts held by or on behalf of Defendants, from Defendants' banking accounts, including but not limited to Defendants' accounts at Banks (a) Valley Independent Bank, 1491 Sixth Street, Coachella, CA 92236 account numbers 005513308, 005511976, and 005513022; (b) Valley Independent Bank, 81-790 Highway 111, Indio, CA 92201 account no. 007504586; and, (c) California Bank & Trust, 81701 US Highway 111, Indio, CA 92201 account no. 2460008751, or any other banking account subsequently determined to be standing in Defendants' name's, or any one of them.

IT IS FURTHER ORDERED that pending the hearing and determination of the foregoing Order to Show Cause, and continuing thereafter, Defendants and their counsel, agents, or representatives, shall be preliminarily enjoined from engaging in, committing, or performing directly and indirectly, any and all of the following acts:

D. Removing, withdrawing, transferring, assigning or selling to any other person or entity, the proceeds from the sales of any or all existing or future inventories of food or other products derived from perishable agricultural commodities, and/or receipts of payment for products or

1 crops sold prior to the date of this order and/or otherwise
2 disposing of assets, books or funds;

3 E. Taking any other action whatsoever which causes,
4 has the effect of causing, or which otherwise dissipates
5 Plaintiff's beneficiary interests in the trust assets;

6 F. Taking any other action whatsoever which violates
7 7 U.S.C. §499e(c)(1) through (4), inclusive, and 7 U.S.C.
8 §499b(4) [§2 of Perishable Agricultural Commodities Act
9 ("PACA)].

10 IT IS FURTHER ORDERED that in the event Defendants lack
11 sufficient funds to promptly deposit the sums described
12 above, Defendants shall be and hereby are required and
13 ordered to:

14 G. Immediately account to the Court and Plaintiff for
15 all assets of the PACA trust from commencement of
16 Defendants' business through the date of this Order.

17 H. Immediately assign Defendants' produce related
18 receivables to Plaintiff for collection until Plaintiff is
19 fully paid, and deposit and/or deliver complete accounts,
20 records, and information of all of said receivables to
21 Plaintiff's counsel without charge to the trust, and
22 subject to Plaintiff's counsel making a weekly accounting
23 for all receivables received or collected by Plaintiff's
24 counsel in that regard. Plaintiff's counsel shall act as
25 trustee in connection with its duties of collection of the
26 accounts receivable and shall deposit any cash assets of
27 the trust which are collected under this order in a trust
28 account.

LAW OFFICES
RYNN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660-2423
(949) 752-2911
FAX (949) 752-0953

LOW OFFICES
RYNN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660-2423
(949) 752-2811
FAX (949) 752-0653

1 I. Endorse any checks made, endorsed or paid, to
2 Defendants which are trust assets and which are in their
3 possession or obtainable by Defendants at the time of the
4 entry of this Order, or which Defendants obtain or ^{ANNEX} which
5 become obtainable by Defendants after the entry of this
6 Order, including but not limited to checks representing
7 payment for sales of growing crops, and shall deliver said
8 assets within 48 hours of Defendants' receipt of them to
9 Plaintiff's counsel as set forth above. Likewise,
10 Defendants shall deliver any cash assets of the PACA trust
11 which are in its possession or are obtainable by Defendants
12 at the time of the entry of this order, or which Defendants
13 obtain or which become obtainable by Defendants after entry
14 of this Order, within 48 hours of Defendants' receipt of
15 them to Plaintiff's counsel.

16 J. File weekly with this Court satisfactory evidence
17 of compliance with the terms of this Order.

18 ~~IT IS FURTHER ORDERED that pending the hearing and~~
19 ~~determination of the foregoing Order to Show Cause, and~~
20 ~~continuing thereafter, Plaintiff and its counsel, agents,~~
21 ~~or representatives, shall have full and complete and~~
22 ~~continuing access to all of Defendants' books and records,~~
23 ~~which shall include but not necessarily be limited to,~~
24 ~~Defendants' accounts receivable and payable ledgers,~~
25 ~~invoices, ledgers, computer runs, bank statements and~~
26 ~~canceled checks, relating to Defendants' business and~~
27 ~~personal financial status from commencement of Defendants'~~
28 ~~business activities forward for the purpose of verifying~~

1 Defendants' accountings required by this Order and for
 2 enforcement of this Order. Defendants shall, upon 2
 3 business days notice by Plaintiff's counsel, allow
 4 inspection and copying of the books and records of said
 5 Defendants by Plaintiff or its representatives at
 6 Defendants' place of business.

7 IT IS FURTHER ORDERED that pending the hearing and
 8 determination of the foregoing Order to Show Cause, and
 9 continuing thereafter, Plaintiff shall be entitled to
 10 depose, under oath, at reasonable times and places, upon at
 11 least 2 business days notice, Defendants and/or Defendants'
 12 other principals, owners, directors, officers,
 13 shareholders, employees, agents and accountants concerning
 14 any matter pertaining to any accounting due pursuant to
 15 this Order, any books or records which Plaintiff is
 16 entitled to inspect under this Order, the trust assets or
 17 any of Defendants' business assets, and/or Defendants'
 18 business practices, procedures or operations from
 19 commencement of Defendants' business activities, personally

20 IT IS FURTHER ORDERED that Plaintiff is to serve copies
 21 of this Order and all pleadings and other papers in support
 22 of the Order on or before April 5, 2004. Defendants shall
 23 file an Opposition, if any, to the Order to Show Cause on
 24 or before 3:30 p.m. on April 8, 2004, ~~2004~~ and shall

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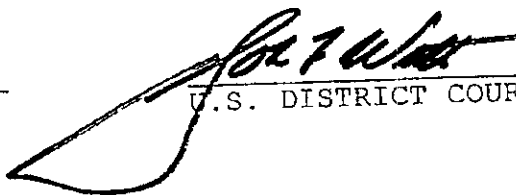
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LAW OFFICES
 RYNN & JANOWSKY
 4100 NEWPORT PLACE DRIVE
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 (949) 752-2911
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1 personally serve Plaintiff's counsel with a copy of said
2 opposition by the same deadline. Plaintiff shall file and
3 serve on Defendant a Reply to Defendants' Opposition or
4 before 8:00 p.m. on April 9, 2004.

5 IT IS FURTHER ORDERED that no bond shall be required to
6 be posted by Plaintiff before the Temporary Restraining
7 Order is effective.

8
9 DATED: 4/1/04


U.S. DISTRICT COURT JUDGE

LAW OFFICES
RYNN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660-2423
(949) 752-2911
FAX (949) 752-0953